

EXCESS PROCEEDS

Effective Date Statewide 9/05	Revision Date
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EXCESS PROCEEDS

Description:

Excess funds from the foreclosure sale of real property are submitted to the Court after all costs, expenses of sale, attorney fees, and trust deed obligations are paid by the trustee. The Court then makes a determination as to how the funds are to be disbursed.

Reference:

Utah Code Annotated, §57-1-29
http://www.le.state.ut.us/~code/TITLE57/htm/57_01026.htm

Clerks Workbook
www.utcourts.gov/education/clkwkbk/civstart.htm

Accounting Manual
<http://192.168.9.168/AccountingManual/lpExt.dll?f=templates&fn=main-j.htm&vid=10.1048/Enu&2.0>

Overview:

Excess funds from the sale of real property are deposited with the Court, along with an affidavit listing all known persons who may claim an interest in the funds (claimants) and their addresses. Within 15 days of the case being filed with the court, the clerk gives written notice of the deposited funds to the claimants listed in the affidavit. Persons claiming an interest in the funds may file a Petition for Adjudication asking the Court for an order to distribute the funds. If distribution of the funds as outlined in the petition is contested within 20 days, a hearing is scheduled. If the petition is not contested, an order to disburse funds may be entered without a hearing. The funds remain in the trust account and are not disbursed until a court order for disbursement is received. Pursuant to Accounting Manual procedures, unclaimed funds may be sent to Unclaimed Property after one year.

Procedure/Computer Entry

EXCESS PROCEEDS

1. Create Case.

- A. From **Primary Menu** select: **Case > Case Filing > Civil Filing**. (Hotkeys are the Alt key and the underlined letter.) This takes you to the **Civil Filing Screen**. Select case type **Lien/Mortgage Foreclosure**. ([See Civil Filing procedure for complete instructions on case filing](#).) Enter amount of funds deposited in **Amount in controversy** box and attach attorney.

NOTE: Enter the **Petitioner** (PET) information by entering Petitioner in the last name field as the address listed on the petition. Add each interested party listed in the affidavit as **Claimant** (CLA).

- B. **Receipt** filing fee. Filing fee is based on amount of funds deposited. ([See Cashiering procedure for complete instructions](#).)
- C. Enter documents in the **Document screen** and assemble physical case file.

1. Create trust account.

- A. From **Primary Menu** select: **Cashiering**. Enter password. **Continue**. Select **A/R > Trust Receivable**. Enter password. Confirm payor. Select **New Party** button. List party name as "**DO NOT RELEASE UNTIL COURT ORDER**." Select **Other Trust** in **Type** box and enter amount of funds to be deposited in the **Amount** box. **Enter**.

The screenshot shows a web application window titled "Trust Receivable". The interface includes a menu bar with "Filings", "Links", "History", "Toolbox", "Warnings", "Journal", "Cash Count!", "Print", and "Index!". Below the menu, there are input fields for "Case" (040900001), "Lien/Mortgage Fcls", and "Name" (IN RE EXCESS FUNDS). A "Recipient" section has a radio button for "Existing Party" and a dropdown menu. The main form area contains fields for "Last Name" (DO NOT RELEASE UNTIL CT ORDER), "First Name", "Address", "City, St, Zip", "Phone", "SSN #", "Trust" (1 of 1), "Type" (Other Trust), "Due Date", "Priority" (1), and "Amount" (\$ 3,795.86). At the bottom, there are several buttons: "Create New Trust", "Check Stub Description", "Receipt Money", "Previous", "Enter", "Adjust Trust", "Jointly and Severally", "Display Trusts", "Next", "Exit", and "Last Trust".

- B. **Receipt funds.** Have separate clerk receipt trust money ([See accounting rules for separation of duties.](#))

3. Create Notice.

- A. Within 15 days of filing date, create notice in word processing, to be sent to all parties, attaching copies of the petition and affidavit. ([See sample notice.](#))
- B. Enter notice in document screen.

4. Petition for Adjudication of Funds/Hearing.

- A. Upon receipt of a Petition for Adjudication of Funds, enter in document screen. Enter additional claimant names and attach attorney. (Petitioner's notice must specify that all claimants have 20 days to contest the petition by affidavit or counter-petition.)
- B. Upon receipt of a Contesting Affidavit, Counter-petition, or Request for Hearing, enter in document screen, enter additional claimant names, attach attorney, and **schedule hearing within 20 days, sending notice to all parties.**

<p>NOTE: If no Affidavit or Counter-petition is filed, the court may enter an Order for Disbursement of Funds without a hearing.</p>

5. Order.

- A. Upon receipt of *unsigned* Order, submit to judge for signature, following local procedure for tracking time, etc.
- B. Upon receipt of *signed* Order, enter in document screen.
- C. Dispose of case with a disposition of *granted*.
- D. Notify Accountant of signed Order so that funds can be disbursed.

NOTICE CONCERNING DISPOSITION OF FUNDS ON TRUSTEE'S SALE

TO WHOM IT MAY CONCERN:

Please be advised that on the ** day of **, 20**, pursuant to §57-1-29, Utah Code Annotated, 1953 as amended, the sum of \$** was tendered to the ** District Court Clerks' Office in Case No. **, entitled:

In the Matter of the Trustee's Sale of **.

Any claimant may petition the court for adjudication of priority to these funds. Said petitioners shall give notice of the petition to claimants listed in the trustee's affidavit and to any other claimants known to the petitioner. The petitioner's notice must specify that all claimants have 20 days to contest the petition by affidavit or counter-petition. If no affidavit or counter-petition is filed within 20 days, the funds may be disbursed to the petitioner according to the petition without further notice.

If a petition for adjudication is contested by a timely affidavit or counter-petition, the court will conduct a hearing and determine the priorities of such proceeds and the clerk will disburse the funds as ordered.

All persons having or claiming to have an interest in the disposition of funds deposited who fail to appear and assert their claims are barred from any claim to the funds.

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Clerk of the Court

**District Court